



Practitioner's Docket No. 00CR064/KE

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: James P. Mitchell

Application No.: 09/494,198

Group No.: 2685

Filed: January 28, 2000

Examiner: S. Trinh

For: System And Method For Internet Access On A Mobile Platform

Mail Stop Appeal Briefs – Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION--37 C.F.R. § 1.192)**

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on July 8, 2004.
2. STATUS OF APPLICANT

This application is on behalf of other than a small entity.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

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Signature

Date: September 8, 2004

Sheila K. Mathews

(type or print name of person certifying)

* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 1.17(c), the fee for filing the Appeal Brief is:

other than a small entity \$330.00

Appeal Brief fee due \$330.00

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$330.00
Extension fee (if any) \$0.00

TOTAL FEE DUE \$330.00

6. FEE PAYMENT

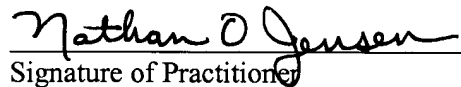
Authorization is hereby made to charge the amount of \$330.00 to Deposit Account No. 18-1722.

A duplicate of this transmittal is attached.

7. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 18-1722.

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09-09-04 IYW Af/2685

Atty. Dkt. No. 00CR064/KE

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Mitchell, James P.

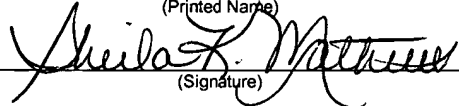
Title: SYSTEM AND METHOD FOR
INTERNET ACCESS ON A
MOBILE PLATFORM

Appl. No.: 09/494,198

Filing Date: 01/28/2000

Examiner: Sonny Trinh

Art Unit: 2685

CERTIFICATE OF EXPRESS MAILING	
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BRIEF ON APPEAL

Mail Stop – APPEAL BRIEF - PATENTS
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

This paper is being filed in response to the final Office Action dated March 8, 2004 (finally rejecting Claims 1-17 and indicating as allowed Claims 18-28). The Notice of Appeal was filed on July 8, 2004. Appellant respectfully request reconsideration of the application.

Under the provisions of 37 C.F.R. §1.192, this Appeal Brief is being filed in triplicate and authorization is hereby given to charge the amount of \$330.00 covering the Rule 17(c) appeal fee to the undersigned deposit account 18-1722 . If this fee is deemed to be

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insufficient, authorization is hereby given to charge any deficiency (or credit any balance) to the undersigned deposit account 18-1722.

REAL PARTY IN INTEREST

The application was assigned to Rockwell Collins, Inc. having a place of business at City of Cedar Rapids, County of Linn, Iowa.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

This is an appeal from the final Office Action mailed March 8, 2004, finally rejecting Claims 1-2, 4-9, 11-14, and 16-17 under 35 U.S.C. §102(e) as being unpatentable over U.S. Patent No 6,477,152 (Hiett) and finally rejecting Claims 3, 10 and 15 under 35 U.S.C. §103(a) as being unpatentable over Hiatt in view of U.S. Patent No. 6,314,572 (LaRocca et al.). Claims 18-28 have been allowed. Claims 1-28 are pending in the application and are the subject of the present appeal.

STATUS OF AMENDMENTS

In response to the Final Office Action, the Applicant submitted Remarks on June 8, 2004 with arguments traversing the rejection of Claims 1-2, 4-9, 11-14, and 16-17 under 35 U.S.C. §102(e) and Claims 3, 10 and 15 under 35 U.S.C. §103(a) and requesting reconsideration of the application. In an Advisory Action dated June 24, 2004, the Examiner stated “the

Examiner is not persuaded by the Applicant's arguments." No amendment has been filed subsequent to the final Office Action.

SUMMARY OF INVENTION

The present invention relates to a system and method which can be used to provide Internet access through a direct broadcast very low range receiver and a terminal on a mobile platform. See Specification, Page 8, Paragraph 1.

The system includes a direct receiver 60 utilized for communication between a mobile platform 35 and a docking area 37. See Specification, Page 14, Paragraphs 4-5. Receiver 60 and a transmitter 70 or 66 can be configured to communicate over a high speed, low range direct channel. Direct transmitter 66 and transmitter 70 are preferably short range communication units. System 30 can be designed so that transmitters 66 and 70 only require a range of several feet or a few meters. In this way, several mobile platforms 35 can communicate to several docking area 37 without interferences and without utilizing different frequency ranges. See Specification, Page 16, Paragraph 3.

Claim 1, the representative claim of the first group, is directed to a communication system 30 for a mobile platform 35. The system includes a direct broadcast very low range receiver 60 located on a mobile platform 35. The system also includes a computer network 54 including at least one terminal 414 on the mobile platform 35. The terminal 414 provide Internet access through the direct broadcast receiver 60.

Claim 3, the representative claim of the second group, recites the communication system 30 recited in Claim 1 of the first group, further including a back channel transmitter 280.

Claim 18, the representative claim of the third group, recites a method of providing electronic browsing service in a mobile platform 35 including at least one terminal 414. The method includes receiving order wire data indicating a default homepage from an external source, and beginning the electronic browsing service at the default homepage.

ISSUES

1. Whether Claims 1-2, 4-9, 11-14, and 16-17 of group 1 may properly be rejected under 35 U.S.C. §102(e) over U.S. Patent No. 6,151,001 (Hiatt).
2. Whether Claims 3, 10 and 15 of group 2 may be properly rejected under 35 U.S.C. §103(a) over Hiatt in view of U.S. Patent No. 6,314,572 (LaRocca et al.).

GROUPING OF CLAIMS

For the purposes of this appeal only, the grouping of the claims is as follows:

1. Claims 1-2, 4-9, 11-14, and 16-17 essentially stand together or fall together and are therefore grouped together. Independent Claim 1 is the representative claim for the group because it is the broadest claim in the group.
2. Claims 3, 10, and 15 essentially stand together or fall together and are therefore grouped together. Dependent claim 3 is the representative claim for the group because it is the broadest claim in the group.

3. Claims 18-28 have already been allowed by the Examiner and are therefore grouped together.

Thus, Appellant respectfully requests individual consideration of each of the three groups herein described. The separate patentability of groups 1 and 2 is discussed below in the argument. Group 3 has already been allowed by the Examiner.

ARGUMENT

REFERENCES RELIED UPON

The following references were relied upon by the Examiner: U.S. Patent No 6,477,152 TO Hiett, issued November 5, 2002 and U.S. Patent No 6,314,572 to LaRocca et al. issued November 6, 2001.

BACKGROUND

The claim rejections to Claims 1-2, 4-9, 11-14, and 16-17 in this appeal are made under 35 U.S.C. § 102(e). The legal standards under 35 U.S.C. § 102(e) are well-settled. The “basic test” for anticipation of a patent claim by a prior art reference is this: to establish anticipation, there must be “identity of invention: the claimed invention, as described in appropriately construed claims, must be the same as that of the reference.” Glaverbel S.A. v. Northlake Marketing & Supply, Inc., 45 F.3d 1550, 1554, 33 U.S.P.Q.2d 1496, 1498 (Fed. Cir. 1995). See also Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1267, 20 U.S.P.Q.2d 1746, 1748 (Fed. Cir. 1991). “The claimed invention is not anticipated under § 102 unless each and every element of the claimed invention is found in the prior art.” Hybritech, Inc. v. Monoclonal Antibodies, Inc., 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986).

The rejections of Claims 3, 10, and 15 at issue in this appeal are made under 35 U.S.C. §103(a). The legal standards under 35 U.S.C. §103(a) are well-settled. Obviousness under 35 U.S.C. §103(a) is a legal conclusion involving four factual inquiries:

- (1) the scope and content of the prior art;
- (2) the differences between the claims and the prior art;
- (3) the level of ordinary skill in the pertinent art; and
- (4) secondary considerations, if any, of nonobviousness.

Litton Systems, Inc. v. Honeywell, Inc., 87 F.3d 1559, 1567, 39 U.S.P.Q.2d 1321, 1325 (Fed. Cir. 1996). See also Graham v. John Deere Co., 383 U.S. 1, 148 U.S.P.Q. 459 (1996).

In proceedings before the Patent and Trademark Office (PTO), the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. In re Piasecki, 745 F.2d 1468, 1471-72, 223 U.S.P.Q. 785, 787-88 (Fed. Cir. 1984). “The Examiner can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” In re Fritch, 972 F.2d 1260, 1265 (Fed. Cir. 1992); in re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988); In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 297 n.24, 227 U.S.P.Q. 657, 667 n.24 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 782 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Obviousness cannot be established by combining the teachings of the prior art to produce the

claimed invention, absent some teachings or suggestion supporting the combination. ASC Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Under 35 U.S.C. § 103(a), “teachings of references can be combined only if there is some suggestion or incentive to do so.” In re Fritch, 972 F.2d 1260, 1266 (Fed. Cir. 1992).

“In order to rely on a reference as a basis for rejection of the applicant’s invention, the reference must either be in the field of the applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992); In re Deminski, 796 F.2d 436, 442, 230 U.S.P.Q. 313, 315 (Fed. Cir. 1986).

The combination of elements from non-analogous sources, in a manner that reconstructs the applicant’s invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from the applicant’s invention itself. In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992). See also Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678-79, 7 U.S.P.Q.2d 1315, 1318 (Fed. Cir. 1988); In re Geiger, 815 F.2d 686, 687, 2 U.S.P.Q.2d 1276, 1278 (Fed. Cir. 1987); Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1147, 227 U.S.P.Q. 543, 551 (Fed. Cir. 1985).

REJECTIONS

1. The claims of group 1 are patentable under 35 U.S.C. §102(e) because Hiett fails to disclose each and every element of the claims in groups 1.

In Section 3 of the final Office Action, the Examiner rejected Claims 1-2, 4-9, 11-14, and 16-17 under 35 U.S.C. 102(e) as being anticipated by Hiett (US 6,477,152).

In rejecting Claim 1, the Examiner stated as follows:

Hiett teaches the apparatus and method for data communications for a mobile platform (figures 3-5, 7, detailed descriptions, abstract) comprising a very low range (column 9, line 28-31, “infrared signals”) broadcast receiver located on the mobile platform (figure 5, element 506).

Applicant’s respectfully disagree. Hiett does not disclose the subject matter recited in independent claims 1 and 8 of group 1. Specifically, Hiett does not recite a very low range direct broadcast receiver or providing Internet data to the computer network via the direct broadcast receiver from a distance of less than a few meters.

Claims 1 and 8 recite that the direct receiver is configured to receive signals within a very low range or that the Internet data is provided from a distance of less than a few meters. Claim 1 recites “a direct very low range broadcast receiver.” Claim 8 recites “providing Internet data to the computer network on the mobile platform via the direct broadcast receiver from a distance of less than a few meters.”

Applicant defines short or low range in the application, stating: “Direct transmitter 66 and transmitter 70 are preferably short range communication units. System 30 can be designed so that transmitters 66 and 70 only require a range of several feet or a few meters.” See

present application, page 16, lines 11-13. Further, the application states “Wireless gatelink 130 can be a very short-range (several feet to a few meters) high-speed radio data link or high-speed optical data link.” See present application, p. 22, lines 12-15. The present application also states “In this way, several mobile platforms 35 can communicate to several docking areas 37 without interference and without utilizing different frequency ranges. In addition, utilizing short-range devices for receivers 60 and 72 and transmitter 70 allows smaller antennas ...” See present application, p. 16, lines 13-17.

In the Advisory Action, the Examiner stated that Hiatt “is for a communication system including a short range system such as infrared signals ...” However, Hiatt does not show, describe or suggest short range transceivers as defined by the Applicant. Receiver 106 in Hiatt is not disclosed as being a very short range receiver. Indeed, the only range discussed is a 1,000 foot range associated with a wireless LAN. See Hiatt, col. 9, lines 23-26. The 1,000 foot range is significantly greater than the ranges recited in claims 1 and 8. The communication types, including infrared signals, may potentially be received from a significant distance, more particularly from greater than a few meters.

Further, a wireless LAN that is configured to broadcast within a 1,000 foot range cannot provide the advantages described in the present application. For example, where multiple transmitters, as described in the present application, are used in the system of Hiatt the 1,000 foot range would cause interference and require the use of different frequency ranges. Similarly, the 1,000 foot range would require larger antennas to receive the signal.

The claimed invention is not anticipated under § 102 unless each and every element of the claimed invention is found in the prior art. Hybritech, Inc. v. Monoclonal Antibodies, Inc., 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986). For at least the reasons described above, each and every element of Claims 1 and 8 are not described in Hiett. Accordingly, the present application cannot be anticipated by Hiett and independent Claims 1 and 8 of group 1 are patentable under 35 U.S.C. §102(e) over Hiett. Reconsideration and withdrawal of the rejection is respectfully requested.

2. The claims of group 2 are patentable under 35 U.S.C. §103(a) over Hiett and LaRocca et al. because the combination of Hiett and LaRocca et al. does not teach or suggest the present invention.

The claims of group 2 are patentable under 35 U.S.C. §103(a) over Hiett in view of LaRocca et al. because, even if combined, the combination of Hiett and LaRocca et al. does not teach or suggest the present invention. As stated above, Hiett fails to teach or suggest providing Internet data to the computer network via the direct broadcast receiver from a distance of less than a few meters.

LaRocca et al. describes a method and apparatus for providing subscription on demand services for an interactive information distribution system using a back channel transmitter coupled to a cable transport subsystem (LaRocca et al., Col. 5, Lines 55-65). LaRocca et al. does not describe a communication system for a mobile platform. Further, LaRocca et al. does not describe providing Internet data to a computer network on a mobile platform via the direct broadcast receiver from a distance of less than a few meters. Accordingly,

LaRocca et al. does not cure the deficiencies of Hiett and the prior art references do not teach or suggest all of the limitations in Claim 3, 10, and 15.

A prima facie case of obviousness requires that the prior art references teach or suggests all of the claimed limitations. See In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974); MPEP, Edition 8(e8), August 2001, Sections 2142, 2143.03. Accordingly, Claims 3, 10, and 15 of group 2 are patentable over Hiett and LaRocca et al. because neither Hiett nor LaRocca et al. provide any suggestion for a direct broadcast receiver receiving from a short range or providing Internet data to the computer network via the direct broadcast receiver from a distance of less than a few meters.

CONCLUSION

In view of the foregoing, Appellant submits that the claims are not properly rejected as being unpatentable under 35 U.S.C. §102(e) or under 35 U.S.C. §103(a) under the cited references. Accordingly, it is respectfully requested that the board reverse the claim rejections and indicate that a Notice of Allowance respecting all pending claims be issued.

Respectfully submitted,

Date September 8, 2004

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APPENDIX – THE CLAIMS ON APPEAL

1. (Previously Presented) A communication system for a mobile platform, comprising:

a direct broadcast very low range receiver located on the mobile platform; and
a computer network including at least one terminal on the mobile platform, the terminal providing Internet access through the direct broadcast receiver.

2. (Original) The communication system of claim 1, wherein the Internet access is interactive access.

3. (Original) The communication system of claim 2, wherein the communication system includes a back channel transmitter.

4. (Previously Presented) The communication system of claim 1, wherein the mobile platform is a boat.

5. (Previously Presented) The communication system of claim 1, wherein the mobile platform is an automobile.

6. (Previously Presented) The communication system of claim 1, wherein the mobile platform is a train.

7. (Previously Presented) The communication system of claim 1, wherein the mobile platform is an aircraft.

8. (Previously Presented) A method of providing Internet service to a mobile platform, the mobile platform including a direct broadcast receiver located on the mobile

platform and computer network including at least one terminal on the mobile platform, the method comprising:

providing Internet data to the computer network on the mobile platform via the direct broadcast receiver from a distance of less than a few meters; and
providing the Internet data to the terminal.

9. (Original) The method of claim 8, further comprising:

transmitting Internet commands from the network on the mobile platform.

10. (Original) The method of claim 8, wherein mobile platform includes a back channel transmitter, and the method further includes transmitting the Internet commands to the satellite from the back channel transmitter.

11. (Original) The method of claim 8, wherein the mobile platform is a boat.

12. (Original) The method of claim 8, wherein the mobile platform is an automobile.

13. (Original) The method of claim 8, wherein the mobile platform is a train.

14. (Original) The method of claim 8, wherein the mobile platform is an aircraft.

15. (Original) The method of claim 8, wherein mobile platform includes a back channel transmitter, and the method further includes transmitting the Internet commands to a terrestrial receiver from the back channel transmitter.

16. (Original) The method of claim 15, wherein the commands are forwarded to an Internet service provider.

17. (Original) The method of claim 16, wherein the Internet service provider responds to the commands via the direct broadcast receiver.

18. (Original) A method of providing electronic browsing service in a mobile platform, the mobile platform including at least one terminal, the method comprising:

receiving order wire data indicating a default homepage from an external source;

and

beginning the electronic browsing service at the default homepage.

19. (Original) The method of claim 18, wherein the external source is a docking area transmitter.

20. (Original) The method of claim 18, wherein the default homepage is selected in response to a destination of the mobile platform.

21. (Original) The method of claim 18, wherein the order wire data includes the default homepage.

22. (Original) The method of claim 18 wherein the order wire data includes an address of the default homepage.

23. (Previously Presented) A communication system for a mobile platform, comprising:

a wireless receiver;

a computer network coupled to the wireless receiver, the wireless receiver receiving a default homepage indication from an external source on the wireless receiver when the mobile platform is parked; and

a terminal coupled to the computer network, the terminal beginning a browsing operation at a default homepage associated with the default homepage indication.

24. (Previously Presented) A method of providing an electronic browsing service on a mobile platform, the mobile platform including at least one terminal, the method comprising:

receiving order wire information from an external source identifying advertising spots;

storing the advertising spots on the mobile platform for subsequent display; and displaying the advertising spots during the electronic browsing service.

25. (Original) The method of claim 24 wherein the order wire data includes the advertising spots.

26. (Original) The method of claim 24 wherein the order wire data includes advertising spots.

27. (Previously Presented) The method of claim 26, wherein the advertising spots are related to a destination of the mobile platform.

28. (Previously Presented) A communication system for a mobile platform, comprising:

a receiver;

a computer network coupled to the receiver, the receiver receiving an advertising spots indication and storing the advertising spots for subsequent display; and

a terminal coupled to the computer network, the terminal providing advertising spots during a browsing operation, the advertising spots being associated with the advertising spots indication.